Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

WRIT PETITION NO. 1506 /2005

PETITIONER

Rai University, Mana, V.I.P. Road, Raipur – through Its Vice Chanceller, K.C. Agrawal, son of Shri R.C. Agrawal, aged about 63 years, Vice Chancellor Erstwhile Rai University, Resident of VIP Road, Mana, Raipur (Chhattisgarh)

P.R. No. 1643/05 Presented by Shri Ajay Dwivedi dated 23.8.05

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through – Its Chief Secretary, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh

2. Department of Higher Education (Technical Education), Jana Shakti Niyojan and Science Technology, Through – Its Additional Chief Secretary, Raipur (C.G.)

3. All India Council for Technical Education (AICTE) through Its Chairman, Indira Gandhi Sports Complex, I.P. Estate, New Delhi.

4. Pandit Ravishankar Shukla University, Raipur, through – Its Registrar, Raipur (Chhattisgarh)

WRIT PETITION UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

(139)

HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

(Division Bench)

Coram: Hon,ble Mr. A.K. Patnaik, C.J.

& Hon'ble Mr. Sunil Kumar Sinha,J.

WRIT PETITION NO.1506 OF 2005

Rai University

- Versus -

State of Chhattisgarh & others

Present : Mr. P. Diwaker, Sr. Advocate with Mr. Alok Bakshi, Advocate for the petitioner.

Mr. Prashant Mishra, Additional Advocate General, for the State of Chhattisgarh.

ORDER
(26-04-2005)

The following order of the Court was passed by **A.K. Patnaik, C.J.**

By judgment dated 11th February, 2005 in the case of **Prof. Yashpal & Anr. Vs. State of Chhattisgarh & Ors.** in Writ Petition (Civil) No.19 of 2004, the Supreme Court declared the provisions of Sections 5 & 6 of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 to be ultra vires and quashed the notifications issued by the State Government in the Gazette in purported exercise of the powers under Section 5 of the aforesaid Act notifying the Universities. In paragraph 45 of the judgment, the Supreme Court further held that in order to protect the interest of the students who may be actually studying in the institutions established by such private universities, the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. The Supreme Court, however, made it clear that the benefit of affiliation to an institution shall be extended only if it fulfills the requisite norms and standards laid down for such purpose and not to every kind of

institution. In paragraph 46 of the said judgment, the Supreme Court further observed that steps may be taken for affiliation of the institutions established by such private Universities to the already existing State Universities in accordance with the directions contained in paragraph 45 of the judgment and that the parties would be at liberty to approach the High Court if any dispute arises in implementation of the direction.

2. Pursuant to the said directions in paragraphs 45 and 46 of the judgment of the Supreme Court, Statute No.27(A) titled as "Admission of interim institutions to the privileges of the University and withdrawal thereof" has been framed and clause 5 of the said Statute No.27(A) provides as follows:

> "5. xxx xxx xxx, an interim institution will be admitted to the privileges of the ESU on the basis of the territorial jurisdiction of ESU for affiliation, as specified in Second Schedule of the above said Act on application of the Sponsoring Body of the Interim Institution and the same shall be withdrawn thereof in the manner in the paras mentioned hereinafter."

In the aforesaid clause 5 of Statute No.27(A), it is stipulated that an interim institution will be admitted to the privileges of the ESU (existing State Universities) on the basis of the territorial jurisdiction of ESU for affiliation. Thus, the said clause 5 of Statute No.27(A) does not make any provision for admission of interim institution to the privileges of the existing State Universities if the institution is beyond the territorial jurisdiction of the existing State Universities for affiliation. The petitioner -Rai University has challenged this provision in clause 5 of Statute No.27(A) in this writ petition and has prayed for quashing the said provision in clause 5 of Statute No.27(A).

3. Mr. P. Diwaker, Sr. Advocate appearing for the petitioner submitted that the petitioner had various study centers beyond the State of Chhattisgarh and in these study centers beyond the State of Chhattisgarh approximately 8500 students were studying different courses and if such study centers are not admitted to the privileges of the existing State Universities on the ground that such study centers are located out side the territory of the State of Chhattisgarh, such 8500 students will not be able to take the examinations in different courses which are scheduled to be

held in may, 2005. He submitted that it is for this reason that the petitioner has challenged the provision in clause 5 of the Statute No.27(A) which confines the admission of an interim institution to the privileges of the existing State Universities on the basis of the territorial jurisdiction of the existing State Universities.

4. Mr. Prashant Mishra, learned Additional Advocate General, on the other hand, submitted that it would be clear from the judgment of the Supreme Court and in particular para 41 thereof that the provisions of the Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 have been declared to be ultra vires as it made a provision enabling the University established under the said Act to have an off-campus centre outside the State and this was clearly beyond the Legislative competence of the Chhattisgarh Legislature. He submitted that in view of the said judgment of the Supreme Court, a provision had to be made in Statute No.27(A) admitting an interim institution to the privileges of the existing State Universities on the basis of the territorial jurisdiction of the existing State Universities and prohibiting any institution located outside the territory of the State of Chhattisgarh from being admitted to the privileges of the existing State Universities as an interim institution.

5. We find full force in the aforesaid submission of Mr. Mishra, learned Additional Advocate General. Para 41 of the aforesaid judgment of the Supreme Court is quoted herein below:

> "41.Dr. Dhawan has also drawn the attention of the Court to certain other provisions of the Act which have effect outside the State of Chhattisgarh and thereby give the State Enactment an extra territorial operation. Section 2(1) of the amendment Act defines 'off-campus centres' which means a centre of the University established by it outside the main campus (within or outside the State) operated and maintained as its constituent unit having the university's complement of facilities, faculty and staff. Section 2(g) defines 'off-shore campus' and it means a campus of the university established by it outside the country, operated and maintained as its constituent unit, having the university's complement of facilities, faculty and staff. Section 3(7) says that the object of the University shall be to establish main campus in Chhattisgarh and to have the study centers at different places in India and other countries. In view of Article 245 (1) of the

> Constitution, Parliament alone is competent to make laws for the whole or any part of the territory of India and the legislature of a State may make laws for the whole or any part of the State. The impugned Act which specifically makes a provision enabling a University to have an off-campus centre outside the State is clearly beyond the legislative competence o the Chhattisgarh legislature."

It would be clear from para 41 of the aforesaid judgment that the Supreme Court has clearly held that in view of the provisions of Article 245(1) of the Constitution it is only Parliament which is competent to make laws for the whole or any part of the territory of the India and the legislature of the State can make laws for the whole or any part of the State but not for any territory beyond the State. It would also be clear from para 41 of the aforesaid judgment of the Supreme Court that the Supreme Court has held that the aforesaid Act was beyond the legislative competence of the Chhattisgarh Legislature because it enabled a University to have an off-campus centre outside the State.

6. In view of the said clear judgment of the Supreme Court, we possibly can not entertain this writ petition challenging the provisions of clause 5 of the Statute No.27(A) which confines the admission of an interim institution to the privileges of the existing State Universities on the basis of the territorial jurisdiction of the existing State Universities for affiliation and which thereby prohibits off-campus centres located outside the territory of the Chhattisgarh from being admitted to the privileges of the existing State Universities of the State of Chhattisgarh and we accordingly dismiss the same.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge